

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 39 of 1997

in

SPECIAL CIVIL APPLICATION No 4170 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

D C CHAUHAN

Appearance:

GOVERNMENT PLEADER for Appellants
MR AS SUPEHIA for Respondent No. 1
M/S.VYAS ASSOCIATES for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 10/02/98

ORAL JUDGEMENT

1. This appeal is filed against judgment and order

passed by the learned Single Judge on September 20, 1995, in Special Civil Application No.4170 of 1994.

2. That petition was filed by respondent No.1 for an appropriate writ, direction or order, for various reliefs. It was contended that the order of suspension was illegal and void as before passing such an order, no preliminary inquiry was held nor an opportunity of hearing was afforded. It was also contended there was undue and gross delay and a suspension order was liable to be quashed and set aside. Finally, it was prayed that during the continuation of suspension period, the petitioner (respondent No.1 herein) was entitled to subsistence allowance on revised pay scales which were granted with effect from 1st January, 1986.

3. It is not in dispute that the petitioner was be suspended by an order passed by the Competent Authority on 31st March, 1982, with effect from 5th April, 1982. At that time, he was working as Talati-cum-Mantri in the pay scale of Rs.260-400. Admittedly, pay scale of Talati-cum-Mantri was revised with effect from 1st January, 1986 from 260-400 to 950-1500. As the petitioner was placed under suspension in 1984, i.e. at the time when the old pay scales were being given to Talati-cum-Mantri, he got subsistence allowance on that basis upto 31st December, 1985. But when revised pay scales were introduced, the petitioner represented to the authority that he must be paid subsistence allowance on the basis of revised pay scales. The said prayer, however, was rejected by the authorities. He, therefore, filed above petition and one of the prayers was to grant subsistence allowance on revised pay scales. He placed reliance on an order passed by this Court in Special Civil Application No.6043 of 1991. It was, undoubtedly, an interim order. A statement was, however, made that an appeal, being Letters Patent Appeal No.110 of 1992, was filed against the order passed by the learned Single Judge and the appeal was dismissed.

3. The learned Single Judge after considering the provisions of the Bombay Civil Services Rules, 1959 as also The Gujarat Civil Services (Revision of Pay) Rules, 1987, held that the petitioner was entitled to subsistence allowance on revised pay scales.

4. We have been taken by Mr. Mehta, learned Assistant Government Pleader, to the provisions of Rule 151 and, in particular, sub-rule(1)(ii)(a) thereof, which reads as under :-

"151. (1) A Government servant under suspension is entitled to the following payments:-

.....(ii)(a) A subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition dearness allowance based on such leave salary."

5. It was argued before the learned Single Judge as well as before us that a Government servant under suspension is entitled to subsistence allowance on the pay scales "at the relevant time" when he was placed under suspension. The Rule does not say so. In our opinion, the learned Single Judge was right in observing that from the language of the Rule, no such interpretation is possible. The learned single Judge has also rightly relied upon an order passed in Special Civil Application No.6043 of 1991, wherein such benefit was granted. We do not see any infirmity in the order passed by the learned Single Judge. The Letters Patent Appeal deserves to be dismissed and is, accordingly, dismissed.

6. The appellant will now implement the order passed by the learned Single Judge.

...

gt